

## HOUSE BILL NO. 617

INTRODUCED BY R. KOOPMAN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATED TO FETAL DEATH DUE TO A LEGAL ABORTION; REQUIRING THE PREPARATION OF A FETAL DEATH CERTIFICATE FOR ALL LEGALLY ABORTED FETUSES; REQUIRING THAT INFORMED CONSENT TO AN ABORTION INCLUDE NOTIFICATION OF THE REQUIREMENT TO PREPARE A FETAL DEATH CERTIFICATE; PROVIDING AN EXEMPTION FROM DISCLOSURE OF DEATH CERTIFICATES; AND AMENDING SECTIONS 50-15-121, 50-15-403, 50-15-404, AND 50-20-104, MCA."

WHEREAS, reducing the total number of abortions in Montana is a noble, humane, and widely supported goal; and

WHEREAS, reflection on the medical reality that ending fetal life terminates a maturing human being may result in more women choosing positive nonabortion options; and

WHEREAS, providing timely awareness of the loss of human life in a manner that guarantees essential privacy is consistent with the principle of informed consent and thus helps avoid tragic consequences and years of regret.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 50-15-121, MCA, is amended to read:

**"50-15-121. Copies from system of vital statistics.** (1) Except as provided in subsections (6) and (7), the department and county clerk and recorders shall, upon receipt of an application, issue a certified copy or copies of a vital record or a part of a vital record to the registrant, the registrant's spouse, children, parents, or guardian, or an authorized representative. Other individuals may obtain certified copies when the individual demonstrates that the record is needed for the determination or protection of the individual's personal or property rights. The department shall adopt rules to further define those who may obtain copies of vital records filed under this chapter.

(2) All applications, forms, and procedures used in the issuance of certified copies of vital records in the state must be uniform and prepared or approved by the department. All certified copies must contain security

1 features that deter the document from being altered, counterfeited, duplicated, or simulated without ready  
2 detection that there have been these changes to the document.

3 (3) Each copy issued must show the date of filing. Copies issued from amended records must be  
4 marked and must show the effective date of the amendment. Copies issued from delayed records must be  
5 marked, must include the date of filing, and must contain a statement of the evidence used to establish the  
6 delayed certificate. A copy issued of a certificate of foreign birth must indicate the fact of foreign birth and the  
7 date of birth (if known), must show the actual place of birth, and must state that the certificate is not proof of  
8 United States citizenship for the adoptive child.

9 (4) ~~A~~ Except for a fetal death certificate related to an abortion, a certified copy or other copy of a death  
10 certificate must be issued upon request of any person.

11 (5) A certified copy of a vital record or any part of a vital record, issued in accordance with subsections  
12 (1) through (3), must be considered for all purposes the same as the original. The admissibility of a certificate  
13 or vital record filed more than 1 year after the event or after a corrective record is filed, of a vital record that has  
14 been amended, or of a certificate of foreign birth must be determined by the judicial or administrative body or  
15 official before whom the certificate is offered as evidence.

16 (6) This section may not be construed to permit disclosure of confidential information contained in a birth  
17 certificate for medical or health use or of information for statistical purposes only contained in a certificate of  
18 marriage or report of dissolution of marriage unless disclosure is specifically authorized by law for statistical or  
19 research purposes or unless ordered by a court.

20 (7) (a) When the department receives information that a certificate may have been registered through  
21 fraud or misrepresentation, it shall withhold issuance of the certificate or any copy of that certificate pending  
22 issuance of an order after an administrative contested case hearing before the department to determine whether  
23 fraud or misrepresentation has occurred.

24 (b) The hearing provided for in subsection (7)(a) must be conducted pursuant to the Montana  
25 Administrative Procedure Act. In the proceeding, the department shall notify the registrant or the registrant's  
26 authorized representative and provide the registrant or the representative the opportunity to be heard.

27 (c) If, upon conclusion of the hearing, fraud or misrepresentation is not found, the department may issue  
28 the certificate or copies of the certificate in question.

29 (d) If, upon conclusion of the hearing, fraud or misrepresentation is found, the department may not  
30 register the certificate unless ordered to do so by a court.

(e) An affected person may appeal the department's decision to the district court as provided in Title 2, chapter 4, part 7.

(8) A person may not prepare or issue any certificate that purports to be an original or certified copy, except as authorized in this chapter or rules adopted to implement this chapter.

(9) The department may, by rule, prescribe details for the hearing and appellate procedures contained in this section."

**Section 2.** Section 50-15-403, MCA, is amended to read:

**"50-15-403. Preparation and filing of death or fetal death certificate -- definition.** (1) A person in charge of disposition of a dead body or fetus ~~that weighs at least 350 grams at death or, if the weight is unknown, has reached 20 completed weeks of gestation at death~~ shall obtain personal data on the deceased, including the deceased's social security number, if any, or, in the case of a fetal death, on the parents that is required by the department from persons best qualified to supply the data and enter it on the death or fetal death certificate.

(2) The person in charge of disposition of the dead body or fetus shall present the death certificate to the certifying physician, the certifying advanced practice registered nurse, or the coroner having jurisdiction for medical certification of the cause of death. The medical certification must be completed by the physician, the advanced practice registered nurse, or the coroner within the timeframe established by the department by rule. If a fetal death was due to an abortion performed pursuant to Title 50, chapter 20, the medical certification must state that the death occurred due to termination of fetal life by legal abortion and the death certificate must be signed by the physician or physician assistant-certified performing the abortion. The person in charge of disposition shall obtain the completed certification of the cause of death from the physician, the advanced practice registered nurse, or the coroner and shall, within the time that the department may prescribe by rule, file the death or fetal death certificate with the local registrar in the registration area where the death occurred or, if the place of death is unknown, where the dead body was discovered.

(3) If a dead body is found in this state but the place of death is unknown, the place where the body is found must be shown as the place of death on the death certificate. If the date of death is unknown, then the approximate date must be entered on the certificate. If the date cannot be approximated, the date that the body was found must be entered as the date of death, and the certificate must indicate that fact.

(4) When a death occurs in a moving vehicle, as defined in 45-2-101, in the United States and the body

1 is first removed from the vehicle in this state, the death must be registered in this state and the place where the  
2 body is first removed is considered the place of death. When a death occurs in a moving vehicle while in  
3 international air space or in a foreign country or its air space and the body is first removed from the vehicle in  
4 this state, the death must be registered in this state, but the actual place of death, insofar as it can be  
5 determined, must be entered on the death certificate.

6 (5) For the purposes of this section, "fetus" means an unborn human:

7 (a) that weighs at least 350 grams at death or, if the weight is unknown, has reached 20 completed  
8 weeks of gestation at death; or

9 (b) that is aborted pursuant to Title 50, chapter 20."

10  
11 **Section 3.** Section 50-15-404, MCA, is amended to read:

12 **"50-15-404. Preparation of certificate when death not medically attended.** (1) If the death or fetal  
13 death occurred without medical attendance or the physician or advanced practice registered nurse last in  
14 attendance failed to sign the death certificate, the local registrar may complete the certificate on the basis of  
15 information received from persons having knowledge of the facts.

16 (2) ~~If~~ Except for a legal abortion performed pursuant to Title 50, chapter 20, if it appears the death or  
17 fetal death resulted from other than natural causes, the local registrar shall notify the coroner and the state  
18 medical examiner for investigation and certification."

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20 **Section 4.** Section 50-20-104, MCA, is amended to read:

21 **"50-20-104. Definitions.** As used in this chapter, the following definitions apply:

22 (1) "Abortion" means the use or prescription of any instrument, medicine, drug, or other substance or  
23 device to intentionally terminate the pregnancy of a woman known to be pregnant, with an intention other than  
24 to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove  
25 a dead fetus.

26 (2) "Attempted abortion" or "attempted" means an act or an omission of a statutorily required act that,  
27 under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct  
28 planned to culminate in the performance of an abortion in violation of this chapter.

29 (3) "Department" means the department of public health and human services provided for in 2-15-2201.

30 (4) "Facility" means a hospital, health care facility, physician's office, or other place in which an abortion

1 is performed.

2 (5) "Informed consent" means voluntary consent to an abortion by the woman upon whom the abortion  
3 is to be performed only after full disclosure to the woman by:

4 (a) the physician who is to perform the abortion of the following information:

5 (i) the particular medical risks associated with the particular abortion procedure to be employed,  
6 including, when medically accurate, the risks of infection, hemorrhage, breast cancer, danger to subsequent  
7 pregnancies, and infertility;

8 (ii) the probable gestational age of the unborn child at the time the abortion is to be performed; ~~and~~

9 (iii) the medical risks of carrying the child to term; and

10 (iv) the requirement for preparation of, the content of, and filing of a fetal death certificate pursuant to  
11 50-15-403;

12 (b) the physician or an agent of the physician:

13 (i) that medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;

14 (ii) that the father is liable to assist in the support of the child, even in instances in which the father has  
15 offered to pay for the abortion; and

16 (iii) that the woman has the right to review the printed materials described in 50-20-304; and

17 (c) the physician or the agent that the printed materials described in 50-20-304 have been provided by  
18 the department and that the materials describe the unborn child and list agencies that offer alternatives to  
19 abortion.

20 (6) "Viability" means the ability of a fetus to live outside the mother's womb, albeit with artificial aid."

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